IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06/10/2003

CORAM

THE HONOURABLE MR. JUSTICE M.KARPAGAVINAYAGAM

CRL.M.P.No.7061 of 2003
in
Crl.O.P.No.4456 of 2002

$State by
Inspector of Police,
J.7, Velachery Police Station,
Chennai-42.
(Cr.No.1047 of 2001) ..Petitioner

-Vs-

$P. Rajagopal ..Respondent

Petition to cancel the bail granted to the respondent by this Court on 1.4.2002 in Crl.O.P.4456 of 2002 and order his arrest and commit him to custody till the disposal of S.C.No.414 of 2002 on the file of the Additional Sessions Judge, Chennai at Poonamallee.

!For Petitioner : Mr. I. Subramanian,
Public Prosecutor.

^For Respondent: Mr. N.Natarajan, S.C. For
Mr.G.Ravikumar.

:O R D E R

P. Rajagopal, the respondent herein is the first accused in S.C.No.414 of 2002 which relates to the offences of conspiracy, abduction and murder of one Santhakumar, the husband of Jeevajothi, the complainant. He was granted bail by this Court on 1.4.2002. The case was ripe for trial. At that stage, the respondent along with other accused went to Thethakudi village where the complainant, P.W.1 resides and attempted to tamper with her evidence by compelling her to receive a sum of Rs.6 lakhs. On her refusl, the respondent and his henchmen attempted to attack the inmates of the complainant's house. The complainant's brother sustained injuries. Then, all of them escaped from the scene and sped away. With reference to this incident, a case was registered. The respondent and others were arrested and produced before the Judicial Magistrate, Thiruthuraipoondi. On the strength of the said incident, the State has now filed this application to cancel the

bail granted to the respondent by this Court on 1.4.2002 contending that the respondent misused his liberty of bail.
2. The brief facts leading to the filing of the application are as follows:
"(a) The respondent Rajagopal is the owner of Saravana Bhavan Hotel at Chennai. The complainant Jeevajothi and her husband Santhakumar were working under the Hotel Management. The respondent wanted to marry Jeevajothi as his third wife. This was resisted by both Santhakumar and Jeevajothi. Therefore, Jeevajothi was abducted by the respondent and others with an intention to compel her to marry him.

(b) With reference to this incident, on 9.11.2001, Jeevajothi gave a complaint to J7 Velacherry Police Station, Chennai. A case was registered against Rajagopal and others in Crime No.1030/2001 for the offences under Sections 147, 451, 352, 354, 365, 366, 342, 323, 327, 498 and 506(ii) read with 109 IPC. Pending investigation in this case, the respondent and others on 24.10.2001 abducted her husband Santhakumar from Chennai and took him to Kodaikanal and murdered him, since the respondent felt that he was a stumbling block for his ill-design to marry Jeevajothi. A separate case was registered for this murder in Crime No.1047/2001 for the offences under Sections 120(b), 147, 342, 364 and 302 I.P.C. by the very same Police of Chennai.

(c) On 23.11.2001, Rajagopal (A1) surrendered before the Judicial Magistrate, Kanchipuram. In both the cases, namely Crime No.1030/2001 and Crime No.1047/2001, the learned IX Metropolitan Magistrate, Saidapet, on 27.2.2002, granted default bail to the respondent under Section 167(2) Cr.P.C. on the ground that charge sheets were not filed in time.

(d) Challenging the said order, the State earlier preferred a petition before this Court in Crl.O.P.No.4456 of 2002 seeking to set aside the same. Ultimately, this Court by the order dated 1.4.2002 set aside the order of 'default bail' holding that the said order is illegal as the charge sheet had already been filed even before the filing of the application under Section 167(2) Cr.P.C. However, this Court in the very same order granted regular bail to the respondent accused with condition to reside at Cuddalore and report before the Chief Judicial Magistrate, Cuddalore every day till the examination of main witnesses before the trial Court is completed. While the order was passed by this Court, it was made clear that the accused should not attempt to tamper with the witnesses and if any complaint is received, the bail granted to them will be cancelled.

(e) Subsequently, an application had been filed for modification of the condition in Crl.M.P.No.4123 of 2002 before this Court. By the order dated 30.4.2002, this Court modified the condition to the effect that the accused Rajagopal to remain at Kanchipuram and report before the Judicial Magistrate for a period of two months.

(f) The case in Crime No.1030/2001 relating to the abduction of the complainant Jeevajothi in S.C.No.55 of 2003 is pending before the Mahila Court, Chennai. The case in Crime No.1047/2001 relating to the murder of her husband Santhakumar in S.C.No.414 of 2002 is pending before the Additional

Sessions Judge, Chennai at Poonamallee.

(g) S.C.No.55 of 2003, pending trial before the Mahila Court, Chenai, was ripe for trial and the same was posted for examination of P. Ws. on 21.7.2003. In the other case relating to murder in S.C.No.414 of 2002 was also posted for appearance of the accused before the Additional Sessions Judge, Chennai at Poonamallee on 18-7-2003.

(h) The prime witness, the de-facto complainant Jeevajothi is residing at Thethakudi village at Nagapattinam District along with her parents.

(i) At this stage, according to the State, on 15.7.2003 at 9.00 p.m., Rajagopal, the accused, his Legal Adviser Rajendran and his men went to Thethakudi village with a cash of Rs.6 lakhs and odd and went to the house of the complainant and asked her not to give evidence in the murder case as well as in the abduction case and compelled her to receive the cash more than six lakhs. Rajendran, the lawyer who was with him also asked her to give evidence in the murder case in favour of the defence. When she refused for the same and shouted at these people, her brother Ramkumar and other relatives came to the main hall and intervened. Then, Rajagopal asked his henchmen to attack the complainant and her brother. One of the accused took a knife and attacked Ramkumar, the brother of the complainant and caused injury on right hand. In the meantime, the villagers gathered there on hearing the hue and cry of the inmates of the house. On noticing this, the accused persons swiftly got into two Toyota Qualis cars and escaped from the spot. Unfortunately, Advocate G.Rajendran was not able to get into the car and as such, he was caught red-handed by the villagers.

(j) Jeevajothi gave a complaint to the Vedaranyam Police Station on the same day at about 11.00 p.m. and the case was registered in Crime No.701/2003 under Sections 147, 148, 452, 506(ii), 324 and 307 I.P.C. against Rajagopal, Rajendran and others. The Vedaranyam police came to the spot and arrested A2 Advocate Rajendran who was caught by the villagers, at about 5.00 a.m. On 16.7.2003.

(k) In the complaint, Jeevajothi gave the registration numbers of the two Toyota Qualis cars by which the other accused escaped. On the basis of those particulars, a wireless message was given to all the police stations in the district about the escape of two Toyota Qualis cars. On receipt of this information, Rajesekaran, Sub Inspector of Police, Tanjore Town Police Station stopped those cars and arrested A1 Rajagopal, who was found in the car, and others and recovered the cash of Rs.6,11,950/- kept in the car. He then handed over a special report on 16.7.2003 and produced the arrested accused in Vedaranyam Police Station. Then, all the accused including Rajendran, the Advocate were sent to the Judicial Magistrate, Thiruthuraipoondi for remand along with remand report. Accordingly, they were remanded.

(l) On the same day, i.e. on 16.7.2003, the respondent and Rajendran and other accused filed bail application before the Judicial Magistrate Court, Thiruthuraipoondi. Rajendran, Advocate alone was released on bail subject to some conditions purely on medical ground. The bail application by the others

was dismissed.

(m) On 18.7.2003, the State filed the present application in Crl.M.P.No.7061 of 2003 to cancel the bail granted to Rajagopal in Crl.O.P.No.4456 of 2002 mainly on the ground that Rajagopal along with others came to Thethakudi village and attempted to tamper the main witness Jeevajothi in the murder case.

(n) In the meantime, the accused Rajagopal and others filed an application for bail before the Principal Sessions Court, Nagapattinam in Cr.M.P.No.3283 of 2003 and the same was dismissed on 24.7.2003. However, again he filed another application in Cr.M.P.No.3345 of 2003 and on 31.7.2003, the same was ordered by the Principal Sessions Judge granting bail. As such, he has come out on bail in the case in respect of the incident of tampering and threatening the witness in the murder case even before this application for cancellation of bail was entertained by this Court."

3. The present application for cancellation of bail came up for admission before this Court on 1.8.2003 and notice was ordered. On receipt of notice, the learned senior counsel for the respondent appeared and filed the counter-affidavit.

4. The matter was argued at great length by both Mr.I.Subramanian, the learned Public Prosecutor for the State and Mr.N.Natarajan, the learned senior counsel representing the counsel on record on behalf of the accused/respondent.

5. The submissions made by the Public Prosecutor in brief are as follows:
"Jeevajothi, the de-facto complainant in both the cases in S.C.No.55 of 2003 relating to abduction pending in Mahila Court, Chennai and S.C.No.414 of 2002 relating to the murder of her husband pending before the Additional Sessions Judge, Poonamallee is the prime witness. The case in S.C.No.55 of 2003 was posted for trial on 21.7.2003. The case in S.C.No.414 of 2002 had been posted before the Additional Sessions Judge, Poonamallee on 18-7-2003 for the appearance of the accused Rajagopal. Though the occurrence had taken place in Chennai and the trial is pending before the Courts at Chennai, the de-facto complainant and other witnesses left Chennai and started residing in Thethakudi village, Nagapattinam District along with her parents and relatives. Just before the commencement of trial, i.e. on 15.7.2003, the accused Rajagopal along with his legal adviser Rajendran, a practising advocate at Chennai and with his other henchmen came to Thethakudi village, Nagapattinam District in two Toyota Qualis cars to strike a deal with Jeevajothi by asking her to resile from her earlier version and to support his defence. They offered money more than six lakhs. She was not amenable. She raised a hue and cry. Her brother and others came and intervened. At the instigation of Rajagopal, one of the accused attacked her brother and he sustained knife injury on his right hand. Then, all the accused tried to escape by getting into the cars. Ultimately, they succeeded in fleeing away from the scene. Unfortunately,Rajendran, the legal adviser was left in the lurch in the village itself, thereby the villagers were able to catch hold of

Rajendran alone. Immediately, the complaint was lodged with police at 1 1.00 p.m. itself and the case was registered. On receipt of message, the Sub Inspector of Police, Tanjore intercepted the cars near Tanjore and arrested the accused and recovered the cash. While the bail was granted by this Court on 1-4-2002 to the accused Rajagopal, this Court specially imposed the condition directing the accused not to tamper with the witnesses and if there is any complaint of tampering, the bail granted wouldl stand cancelled. Now, the incident of tampering with the witnesses has taken place on the eve of trial. Through the sufficient materials in the form of statement of the witnesses, wound certificate, recovery of cash, the recovery of the chappals belonged to the accused from the spot, etc., the State has established the act of the accused in having made an attempt to tamper with the witness, by all the probabilities. As such, the respondent misused his liberty of bail and consequently, the same has to be cancelled."

6. In reply to the above submissions, Mr.N.Natarajan, the learned senior counsel appearing for the respondent accused has made the following contentions:
"The respondent has never gone to Thethakudi village to tamper with the witness. The case is falsely foisted against him. The affidavit seeking for cancellation of bail has been filed only by the investigating officer in S.C.NO.414 of 2002 and the officer who is the investigating the case over the incident which took place at Thethakudi has not chosen to file any affidavit. The witnesses for the incident have never filed the supporting affidavits. The application has already been filed on 7.7.2003 by the prosecution for transfer of the case from Mahila Court to Poonamallee Sessions Court to try both the cases. Even then, subpoena was obtained on 14-7-2003 from Mahila Court to be served on the witnesses at Thethakudi. Those summons were never served on the witnesses. On 15-7-2003, Rajagopal, the accused was travelling with other people to Vellore, carrying with him the cash of Rs.6 lakhs to meet the expenses for the function for a new branch hotel at Vellore to be opened on 1-9-2003. On the way to Vellore, he went to Thirunallar Saneeswarar temple, Tanjore District and after darshan, he proceeded to Vellore-via Tanjore. At that time, the Police intercepted and took them to the Vedaranyam Police Station. One Ramachandran, Assistant Commissioner of Police, Guindy Range,Chennai was present at the Vedaranyam Police Station on 16-7-2003 at about 8.00 a.m. Even though he is not the investigating officer in S.C.No.55 of 2003 and S.C.No.414 of 2002, from the beginning he has shown undue interest in these cases . The presence of the said officer attached to Chennai Range in Vedaranyam Police Station on 16.7.2003 itself would show that a drama was enacted only at the instance of the Assistant Commissioner of Police, Chennai, in order to create a ground for cancellation of bail. The incident is so artificial. The place of the arrest of the accused is near Tanjore, which is situated 83 kms. away from Thethakudi village. The injury found on the right hand of the witness was so simple and minor injury. Therefore, it cannot be said that there was an attempt to murder the brother of the complainant. Considering the situs and nature of the injury, the Sessions Court concluded that it cannot be a case of Section 307 I.P.C. and granted bail. Since there are no sufficient materials produced by the prosecution to prove the alleged incident took place on 15.7.2003 and in view of the materials available on record to show that the defence case is more probable, the bail may not be

cancelled."

7. In view of the specific allegations made against Ramachandran, Assistant Commissioner of Plice, Guindy Range, in the counteraffidavit of the accused, the learned Public Prosecutor filed the reply affidavit sworn to by the said Ramachandran denying those allegations. According to the Assistant Commissioner of Police, he is Guindy Assistant Commissioner of Police, having jurisdiction over Velachery Police Station in which both the crime numbers relating to S.C.No.55 of 200 3 and S.C.No.414 of 2002 were registered. As Assistant Commissioner of Police having jurisdiction over the Velachery Police Station, he was supervising in the investigation in these cases. He received information from the Inspector of Police, Vedaranyam about the incident of threatening and tampering with the witness which took place on the nigh of 15.7.2003 at Thethakudi village. Since he was interested in the safety and welfare of the prime witness-Jeevajothi, he rushed to Vedaranyam Police Stationon 16.7.2003 and ascertained the facts and also ensured the adequate protection to the witness and returned to the city on the very next day. Immediately after the arrest of Advocate Rajendran, an intimation was sent to the relatives of Rajendran at Chennai as well as to the President of the Advocates' Association and the Hon'ble Chief Justice of High Court regarding his arrest as per the procedure. He has never shown any undue interest in these cases. Neither Rajendran nor Rajagopal had made any complaint against the Assistant Commissioner of Police and other police regarding this to the Judicial Magistrate, Thiruthuraipoondi who remanded them. The summons were not served on the witnesses in the cases, since on the application filed by the State for transfer of the cases to have joint trial in one Court, the cases were stayed by this Court. As such, the allegations against the officer are false.

8. Both the counsel would cite a number of authorities of this Court as well as the Supreme Court.

9. The Public Prosecutor would cite the following decisions:
(i) AIR 1951 MADRAS 1042 (Public Prosecutor v. George Williams) (ii) AIR 1958 S.C. 376 (T.H.Hussain v. M.P.Mondkar)
(iii) AIR 1978 S.C. 179 (Gurcharan Singh v. State (Delhi Admn.)
(iv) AIR 1978 S.C. 961 (Delhi Admn. v. Sanjay Gandhi)
(v) 1979 CRL.L.J. 455 (MAD. H. C.) (State v. Veerapandy)
(vi) 1987 CRL.L.J. 1872 (SC) (Shahzad v. Ishtiaq)
(vii)1994 CRL.L.J. 841 (Delhi H. C.)(State v. Mahinder Singh)
(viii) 1994 Supp (2) S.C.C. 205: (Sant Ram v. State of Haryana) (ix) 1996 (I) C.T.C. 249 (Mad) (State v. Adi Rajaram)

10. The learned senior counsel appearing for the Respondent Accused would cite the following authorities:
(i) 1989 (3) S.C.C. 532 (Rajnikant Jivanlal v. Intelligence Officer)
(ii) 1992 (3) Crimes 597 (Aslam Babalal Desai v. State of Maharashtra)
(iii) 1995 S.C.C. (Cri) 237 (Dolat Ram v. State of Haryana)
(iv) 2000 S.C.C.(Cri) 1508 (Subhendu Mishra v. Subrat Kumar Mishra)
(v) 2001 S.C.C. (Cri) 1124 (Puran v. Rambilas)

11. I have carefully considered the submissions made by the learned Public Prosecutor and Mr.N.Natarajan, the learned senior counsel appearing for the respondent and perused the records. I have given my anxious consideration to the contentions urged on either side.
12. Before dealing with the merits of the respective contentions, it would be appropriate to refer to the guidelines given by the various Courts in the decisions cited supra, while considering the application for cancellation of bail. The guidelines are these:

A) As a fair trial is the main objective of the criminal procedure, any threat to the continuance of a fair trial must be immediately arrested and the smooth progress of a fair trial must be ensured.

B) A fair trial has naturally two objects in view; it must be fair to the accused and must also be fair to the prosecution. The test of fairness in a criminal trial must be judged from this dual point of view. It is therefore of the utmost importance that, in a criminal trial, witnesses should be able to give evidence without any inducement or threat either from the prosecution or the defence. A criminal trial must never be so conducted by the prosecution as would lead to the conviction of an innocent person; similarly the progress of a criminal trial must not be obstructed by the accused so as to lead to the acquittal of a really guilty offender.

C) If an accused person, by his conduct, puts the fair trial into jeopardy, it would be the primary and paramount duty of criminal Courts to ensure that the risk to the fair trial is removed and criminal Courts are allowed to proceed with the trial smoothly and without any interruption or obstruction.

D) The question of cancellation of bail under Section 439(2) Cr.P.C. of the Code is certainly different from admission to bail under Section 439(1) Cr.P.C. Rejection of bail when bail is applied for is one thing, cancellation of bail already granted is quite another. It is easier to reject a bail application in a non-bailable case than to cancel a bail granted in such a case. Cancellation of bail necessarily involves the review of a decision already made and can by and large be permitted only if by reason of supervening circumstances, it would be no longer conducive to a fair trial to allow the accused to retain his freedom during the trial.

E) It is not necessary for the prosecution to prove the threatening incident by a mathematical certainty or even beyond a reasonable doubt. In a matter of cancellation of bail, every incidental matter in a criminal case need not be proved beyond a reasonable doubt like the guilt of the accused. Though the guilt of the accused in cases which involve the assessment of facts has to be established beyond a reasonable doubt, these various facts are not required to be proved by the rigorous standard for cancellation of bail. The prosecution, therefore, can establish its case in an application for cancellation of bail by showing on a preponderance of probabilities that the accused has attempted to tamper or has tampered with its witnesses. Proving by the test of balance of probabilities that the accused has abused his

liberty or that there is a reasonable apprehension that he would interfere with the course of justice, is all that is necessary for the prosecution to do in order to succeed in an application for cancellation of bail.
F) The power to cancel the bail and to take back the accused in custody who has been enlarged on bail has to be exercised with care and circumspection. This power, though of an extra-ordinary nature, is meant to be exercised in appropriate cases when, by a preponderance of probabilities, it is clear that the accused is interfering with the course of justice by tampering with witnesses. Refusal to exercise that wholesome power in such cases, few though they may be, will reduce it to a dead letter and will suffer the Courts to be silent spectators to the subversion of the judicial process.

G) The relevant factor, while exercising the power, which should be taken by the court into consideration for cancellation of bail is to see whether from the affidavit filed by the prosecution has the prosecution by a preponderance of probability, made clear whether the accused are interfering with the course of justice by tampering with the witnesses or have contravened the conditions imposed on them and thereby abused the liberty granted by the court.
H) Once an accused has been enlarged on bail, his liberation from custody cannot be lightly interfered with, but this does not mean that even in a proper case where ends of justice would be defeated unless the accused is committed to custody, power of the High Court to cancel the bail cannot be exercised.
I) Rejection of bail stands on one footing, but cancellation of bail is a harsh order because it interferes with the liberty of the individual. Hence, it must not be lightly resorted to.
J) Rejection of bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order of cancellation of the bail already granted. Generally speaking, the grounds for cancellation of bail, broadly (illustrative and not exhaustive) are: interference or attempt to interfere with the due course of administration of justice or abuse of the concession granted to the accused in any manner.

13. Keeping in view of the above guidelines, let me now enter into the question as to whether there is a situation warranting for cancellation of bail, taking into consideration the rival contentions and the facts and circumstances presented in the present case.

14. Rajagopal, the first accused, called as 'Saravana Bhavan Rajagopal' is the proprietor of a chain of hotels carrying on business under the name and style of "Hotel Saravana Bhavan" at various places in the city of Chennai, Delhi and in foreign countries. Few years back, one Ramasamy of Thethakudi village, Nagapattinam District, was working as Assistant Manager in the Saravana Bhavan Hotel at Chennai. He left for Malaysia leaving his wife and daughter Jeevajothi and son Ramkumar. Jeevajothi fell in love with one

Santhakumar, a tuition teacher and married him in the year 1999.

15. Rajagopal married one Valliammal and through her, he had two sons. In 1994, he married one Krithika, aged about 27 years, as his second wife. Earlier, the said Krithika got married to one Ganesan, who was an employee of the said hotel. Rajagopal persuaded him to break the matrimony with the said Kiruthika after making payment of money. Having been attracted by Jeevajothi, Rajagopal wanted to marry her also as his third wife and asked her husband Santhakumar to sever his marital tie with Jeevajothi. Both Jeevajothi and her husband resisted the unlawful attempt of Rajagopal.

16. One day, both were abducted and Jeevajothi was taken to a separate place and she was threatened and beaten to marry him. Regarding this incident, on the complaint of Jeevajothi, a case was registered against Rajagopal and others on 1.10.2001 in Crime No.1030/2001 for the offences under Sections 147, 451, 352, 354, 364, 366, 342 and 506 Part II I.P.C. On 24.10.2001, Santhakumar, the husband of the complainant was abducted from Velachery and taken to Kodaikanal at the instigation of Rajagopal, the accused and he was murdered there and the body was thrown away in the hills. Regarding this incident, another case was registered by J7 Velachery Police Station in Crime No.1047/200 1 against Rajagopal and others for the offences under Sections 120-B, 147, 342, 364 and 302 I.P.C.

17. On 23.11.2001, Rajagopal surrendered before court and he was remanded to judicial custody in respect of both the Crime Nos.1030/2001 and 1047/2001. On 27.2.2002, he was released on bail by the IX Metropolitan Magistrate, Saidapet under Section 167(2) Cr.P.C. under the concept of "default bail".

18. The State was constrained to file an application before this Court to set aside the said order. This Court in Crl.O.P.4456 of 2002 accepted the contention of the State and set aside the order of granting default bail holding that the order was illegal and however, granted regular bail to the accused Rajagopal by the order dated 1.4.2002 with the condition that he should reside at Cuddalore and report before the Chief Judicial Magistrate. The further condition was specified stating that he should not attempt to tamper with the witnesses and if any complaint is received, it is made clear that the bail granted to him will be cancelled. Thereafter, the condition to reside at Cuddalore was modified to the effect that he may reside at Kanchipuram and report to the court only for two months. After the said period, the condition to stay at Kanchipuram had automatically elapsed. However, the condition "that he should not attempt to tamper the witnesses and if any such complaint is received, the bail granted to him will be cancelled" is in tact.

19. There is no dispute in the fact that S.C.No.414 of 2002 relating to the murder of the de-facto complainant's husband and S.C.No.55 of 2003 relating to the abduction of P.W.1 with an intention of compelling her to marry Rajagopal were nearing the trial stage. As a matter of fact, S.C.No.55 of 2003 was specifically posted for trial on 21.7 .2003 and S.C.No.414 of 2002 was posted for the appearance of the accused on 18.7.2003. In that context, the occurrence in question has taken place on 15.7.2003.

20. According to the State, on 15-7-2003 at about 9.00 p.m., the first accused Rajagopal, his legal adviser Rajendran (A2) and other accused came in two Toyota Qualis cars to Thethakudi village where P.W.1 , the de-facto complainant is residing and they entered into the house of the complainant Jeevajothi for the purpose of tampering and intimidating her in order to prevent her to give evidence in the murder case in S.C.No.414 of 2002 against Rajagopal and offered to pay the money of Rs.6 lakhs and odd and when the same was resisted, the witnesses were threatened with dire consequences and one of the witnesses sustained knife injury at the instance of the respondent accused and on noticing the crowd of villagers coming to the scene, the respondent and others speedily got into the two Toyota Qualis cars and sped away, without knowing that the respondent's legal adviser was left in front of the house of the complainant and he was caught by the villagers.

21. While refuting this accusation, the senior counsel Mr.Natarajan would contend on the strength of the counter-affidavit filed by Rajagopal (A1) that he never went to Thethakudi for tampering with the witnesses, and on the other hand, he went in the two Toyota Qyalis cars along with his men on 15.7.2003 to Vellore in order to supervise the arrangement being made for opening of a branch of his hotel to be held on 1.9.2003 and on the way to Vellore, he went to Thirunallar Saneeswaran Temple and after Darshan, he was proceeding towards Vellore through Tanjore and at that time, the cars were stopped and the accused were taken to Vedaranyam Police Station and as such, the incident is a make-belief affair which has been enacted for the purpose of creating a ground for cancellation of bail at the instance of Ramachandran, the Assistant Commissioner of Police who has taken undue interest in this case.

22. At the outset, it shall be stated that while this Court begins the process of deciding the issue relating to cancellation of bail, this Court shall be reminded of the legal position that the grounds for rejection of bail is one thing, and the grounds for cancellation of bail is altogether different thing as in fact, the order of cancellation is a so harsh and it requires convincing overwhelming materials to take back the accused in custody so as to lose his liberty of bail. Similarly, this Court is conscious of the settled law that the materials regarding the incident in question need not be proved beyond reasonable doubt by the prosecution as the burden of the prosecution to establish the same is not that much onerous as that of the burden to prove the guilt of the accused in a trial and the incident in question can be established through the preponderance of probability.

23. While considering the said aspect, this Court has to necessarily refer to one important element which is noticed in this case. When the default bail was granted by the IX Metropolitan Magistrate, Chennai, the State filed an application before this Court to set aside the same, since the said order is illegal as the order has been passed subsequent to the charge sheet had been filed in the case. This Court rightly by the order dated 1.4.2002 held that the order under the concept of "default bail" is wrong. However, this Court graciously granted regular bail in the very same order even in the absence of any application by the accused seeking for bail by imposing some conditions. The State was not aggrieved over this order. As far as the State

is concerned, it felt satisfied that "At least the operation was successful". In other words, the State has not chosen to show any interest to challenge the said order of bail by taking to the Supreme Court. The original condition in the bail order imposed by this Court on 1.4.2002 is that the respondent must reside at Cuddalore and report before the court till the examination of main witness is completed. But, the respondent filed an application in Cr.M.P.No.4123 of 2002 seeking for modification of the condition to allow him to reside at Chennai. This Court by the order dated 30.4.2002 modified the condition to the effect that the respondent/accused must reside at Kanchipuram and report to the court only for a period of two months. This order conveys the meaning that after two months, he could come to Chennai and stay there or any other place wherever he likes. By virtue of this order, the earlier condition that was imposed on 1.4.2002 that he shall reside at Cuddalore and report before the court till the examination of the main witnesses is completed in Chennai court has automatically relaxed. Despite this freedom given explicitly and impliedly by the order of this Court, the State has not chosen to file any application to restore the original condition, namely, not to come to Chennai till the main witnesses are examined. This would indicate that the State did not seriously oppose the relaxation of the condition with reference to the stay at Chennai. Thus, it is clear that the State was not interested in opposing each and every application filed by the accused nor had insisted for the earlier condition nor for any other condition so as to cause hardhip to the respondent accused.

24. However, it is to be noted that the condition which has been imposed by this Court on 1.4.2002 that the petitioner should not tamper with the witnesses at any cost failing which, the bail will be cancelled, has not been 'allowed' to be relaxed. It is also pertinent to note that the State has never shown any undue interest from 1.4.2002, the date of order of bail till 15.7.2003, the date of the incident, either by taking steps in sustaining the condition to reside at somewhere else till the examination of main witnesses is completed or in getting him back in custody to enable the trial is go on without giving room for intimidation.

25. In the light of the said fact situation, let me now consider the materials regarding the incident in question.

26. After hearing the arguments of both the counsel, this Court summoned the records from the Judicial Magistrate, Thiruthuraipoondi, such as remand report, the statement of the accused before remand court, remand order and the bail applications filed by the accused persons before the Judicial Magistrate Court, Thiruthuraipoondi as well as the records from the Principal Sessions Judge, Nagapattinam relating to the bail applications and the dismissal order at the first instance and the second application filed and the bail order passed for the purpose of proper appraisal of the contentions made on either side. Accordingly, on receipt of those records from both the courts, the said records were perused. The case diary produced by the Public Prosecutor also was perused.

27. On a careful perusal of those records, the following factors are revealed.

28. The arrest memo relating to Rajendran, legal adviser and Rajagopal, the respondent herein, another accused, available on record would show that Rajendran, legal adviser was arrested near the house of the complainant at Thethakudi village and Rajagopal along with the others were arrested near Tanjore when they were travelling in the Toyota Qualis cars at 12.10 mid night on 15.7.2003, the Sub Inspector of Police, Tanjore on receipt of the wireless message from Vedaranyam Police and the cash of Rs.6,11,950/- was recovered from Rajagopal. Immediately after the arrest, the Sub Inspector of Police, Tanjore presented a special report and produced the accused along with the cars and the cash recovered before Vedaranyam Police on 16.7.2003 at 8.30 a.m. This special report signed by the Sub Inspector of Police, Tanjore and also the voucher signed by the Inspector of Police, Vedaranyam are available on record.

29. Similarly, it is noticed that the complaint was given by Jeevajothi, the de-facto complainant in her own handwriting and the same was registered on 15.7.2003 at about 11.00 p.m. In this complaint, she mentioned about the registration numbers of the Toyota Qualis cars in which the accused persons except Rajendran, legal adviser, escaped. This complaint was received by the Judicial Magistrate at 7.30 a.m. on 16.7.2003. Only after registration of the case, the accused Rajagopal and others were arrested and the said Toyota Qualis cars and the cash were recovered at about 12.10 mid night. In the common remand report submitted by the Inspector of Police, Vedaranyam, while remanding all the accused including A2 Rajendran, legal adviser together, he has mentioned all these factors.

30. According to the statements of witnesses, when the accused got into the cars and tried to escape, one car hit against a tree and the car glasses got broken and Rajagopal escaped in the car after leaving his chappals in front of the house of the complainant. The observation mahazar and recovery mahazar and the records would show that the car glass pieces found near the tree and the chappals belonged to the accused Rajagopal have been recovered. In support of the complaint, the Inspector of Police obtained statements from her brother Ramkumar, the injured witness and relatives Thavamani, Ramasamy, Thasamani, the villagers Govindasamy, s/o Subramania Gounder and Govindasamy, s/ o Kuppusamy Gounder. Ramkumar, the injured was taken to hospital where he was treated. The accident register was also issued by the Doctor mentioning the injury found on his right hand which was alleged to be caused with knife in the incident took place on 15.7.2003 at 9.30 p.m. near his residence.

31. While dealing with these materials, this Court is so cautious as cautioned by the Supreme Court that this Court should not give any finding with reference to the veracity of the statements of the witnesses including the complainant. This Court is also conscious that this Court is only called upon to find out whether the incident in question has been established by the State by preponderance of probabilities. To decide whether these materials can be considered to be prima facie materials to conclude that the incident has been established, it would be worthwhile to refer to the case of the defence at this stage itself. If the case of the defence is more probable, then it is quite easy for this Court to say that the incident in question is improbable. Considering this situation, let me now deal with the defence theory.

32. According to the counter-affidavit of the accused Rajagopal, he along with others went in two Toyota Qualis cars to Thirunallar and had Saneeswaran darshan and on the way to Vellore via. Tanjore, they were intercepted and the cars and cash were recovered from them and brought to Vedaranyam Police Station.
33. Even at the threshold, it must be stated that this defence story has been projected by the respondent/accused only in the counteraffidavit sworn to by him which has been filed before this Court on 15.9.2003. In other words, this case of the defence has been mentioned neither before the court in which he was remanded nor in the first bail application filed before the Judicial Magistrate, Thiruthuraipoondi on 16.7.2003 nor in the bail application before the Sessions Court, Nagapattinam on 18.7.2003 which was dismissed on 24.7.2003 nor in the second application filed by the accused before the Sessions Court on 2 5.7.2003, which was ordered on 31.7.2003. Thus, it is clear that there is no material placed before this Court as to why such a defence was not placed before the other courts earlier and there is no other material placed at least now before this Court in support of his defence, excepting to state defence story in the counter-affidavit filed by the accused on 15.9.2003 before this Court.
34. The remand order passed by the Judicial Magistrate, Thiruthuraipoondi dated 16.7.2003 would show that when A2 Rajendran was produced, he reported that the case filed against him is false and one policeman in ununiform obtained his statement under duress. When A1/ respondent, A3 and A4 were produced before the court, those accused said that they had nothing to make any complaint against the police. These statements were recorded. Therefore, the arrest of the Advocate(A2) near the complainant's house and the respondent(A1) and others near Tanjore had not been disputed.

35. Though there is a statement in the handwriting of the advocate available in the case diary to the effect that he came along with the first accused Rajagopal to meet the Vedaranyam M.L.A. and on the way, Rajagopal went to Thethakudi village and had some conversation with P.W.1, the said statement need not be given any importance at this stage, especially when he stated before the Magistrate that some statement has been obtained from him under duress. But, the other materials found in the case diary as well as in the lower court records would show that the said Rajendran, Advocate has been the legal adviser for Rajagopal, the first accused for about 4 or 5 years.

36. As indicated earlier, the fact that Rajendran, the legal adviser of Rajagopal, was arrested near the house of the complainant has not been disputed. As a matter of fact, Advocate Rajendran (A2) has filed an affidavit before the Judicial Magistrate, Thiruthuraipoondi on 16.7.2003 while he was remanded admitting that he came from Chennai to Thiruthuraipoondi for some professional work and was having heart ailment and as such, he has to be released on bail. Only on the basis of the medical ground, he was released on bail on the same day by the Judicial Magistrate, Thiruthuraipoondi.
Therefore, there are prima facie materials to show that A2 Rajendran found near the residence of the complainant was caught by the villagers who kept in their custody, while the other accused sped away. He was produced to the police by the villagers at about 5.00 a.m. when the police came to the village Thethakudi.

37. It is also noticed that immediately after the arrest of A2 Advocate, the intimation about the arrest was sent to his relatives as well as to the President of the Advocates' Association, High Court, Madras. From the case diary, it is also noticed that intimation was sent to the Hon'ble Chief Justice of this Court through the Registrar, High Court, from Control Room through Head Constable 1534. The copy of the intimation is available. The same is as follows:

"Advocate Tr.G.Rajendran,Aged 58/03 S/o Govindasamy, No.51, South Usman Road, T.Nagar, Chennai, the legal adviser of P.Rajagopal, the owner of Saravana Bhavan Hotels, was arrested on 16.7.2003 at 5.00 hrs. at Thethakudi North village in Vedaranyam P.S. limit in connection with Vedaranyam P.S. Cr.No.701/2003 u/s 147, 148, 324, 452, 506(ii) and 307 I.P.C. and he has to be sent for remand to the Court of Hon'ble Judicial Magistrate, Thiruthuraipoondi."

This shows that the investigating agency on receipt of the complaint and arrest of the accused Advocate who was available in the scene, was careful enough to intimate about the arrest to the relatives as well as to the Advocates' Association and to the Hon'ble Chief Justice immediately, as per the guideline given by the Supreme Court.

38. It is seriously contended that the incident is nothing but a farce one and it was nothing but a drama successfully enacted by Mr. Ramachandran, Assistant Commissioner of Police, Guindy Range, who was present at the Vedaranyam Police Station on the relevant date. It is true that the Assistant Commissioner of Police himself admitted in his reply affidavit that he came to the Vedaranyam Police Station next day, i.e. on 16.7.2003 and he was present throughout the day and next day, he left for Chennai. According to the Assistant Commissioner of Police, an intimation from the Vedaranyam Police was received by him that the witnesses in the murder case at Thethakudi village were threatened and intimidated and so he rushed to the Vedaranyam Police Station in order to ensure protection to the witnesses to be examined in the murder case pending in Chennai court. It is specifically mentioned in his reply affidavit that as a superior officer, viz., Assistant Commissioner of Police, Guindy Range, he was supervising the investigation conducted by Velachery Police in S.C.No.55 of 2003 and S.C. No.414 of 2002. Under those circumstances, this Court is unable to hold that he has shown undue interest in this case and as such, he only enacted the drama. Even assuming that his presence in the Vedaranyam Police Station on 16.7.2003 is unnecessary, there is no necessity to show the arrest of the Advocate near the residence of the complainant. No enmity has been attributed against Assistant Commissioner of Police for booking a case against an Advocate. As it is noted earlier, there are materials from the case diary as well as in the lower court records that the second accused Rajendran was the legal adviser for the first accused Rajagopal.

39. When this Court confronted with the senior counsel appearing for the respondent/first accused as to why A1's legal adviser was to be present near the place of occurrence during the relevant time, the senior counsel on the basis of the instruction given by the lower court counsel, who was present in this Court, would submit that Rajendran had never been the legal adviser for the respondent and so, he could not give any reason for the presence of the

advocate accused at the scene of occurrence. He would further emphatically submit, on instruction from the lower court counsel, that the respondent has no connection whatsoever with the said advocate. This Court further asked the learned senior counsel as to whether the said aspect, namely that there was no connection between the respondent accused and Advocate accused, has been mentioned in the counter-affidavit filed by the respondent. The senior counsel would fairly submit that such thing has not been mentioned. However, he represented the same only on the basis of the instruction given by the counsel appearing for the lower court counsel. This aspect, in my view, is most important. It is the consistent case of the prosecution as mentioned in F.I.R., Remand report and state of witnesses and the affidavit filed for cancellation that A2 , as a legal adviser accompanied Rajagopal and others and went to the complainant's house and A1 and A2 both threatened the complainant. But, it has never been mentioned in any of the applications filed before the lower courts and in the counter affidavit filed by the respondent that A1 has nothing to do with A2.

40. On the other hand, according to the State, all the people consisting of A1 Rajagopal and A2 Rajendran, legal adviser along with the other accused came together in two Toyota Qualis cars to Thethakudi village in order to tamper with the witness by offering money and threatening and as such, after arrest of all the accused, a common remand report was filed by the Inspector of Police before the Judicial Magistrate, Thiruthuraipoondi.

41. In this context, it would be worthwhile to refer to the following aspect found in the lower court records to show that the prosecution case is so probable.

42. As soon as the common remand report was filed before the Judicial Magistrate, Thiruthuraipoondi,one G.Dhananjeyan, Advocate filed memo of appearance appearing for the accused 1 to 6. In the memo of appearance, Rajagopal was mentioned as first accused and Rajendran, the advocate was mentioned as 6th accused. But subsequently, the names of the accused 1 to 5 were struck off and bail application was filed on behalf of Rajendran by Dhananjeyan, Advocate in Cr.M.P.No.5072 of 2 003. On the same day, bail application was filed on behalf of the respondent/first accused and others in Cr.M.P.No.5071 of 2003 by one V.Rudrapathy, Advocate. The perusal of the said bail application filed before the Judicial Magistrate would indicate that originally, Rajendran's name was mentioned as one of the petitioners and subsequently, it was struck off. In the same way, in the memo of appearance also filed on behalf of the first accused/respondent Rajagopal, Rajendran's name was mentioned as second petitioner and then struck off. In the copy petition under Section 339 Cr.R.P. Filed on 18.7.2003 asking for the copy of the order, Rajendran's name was originally mentioned and then struck off. This would show that originally, a single counsel was engaged by all the six accused inclusive of the respondent(A1) and A2 Rajendran, advocate and application for bail was filed in Cr. M.P.No.5071 of 2003 through one Rudrapathy and subsequently, Rajendran's name was struck off and Rajendran thereafter filed a separate application in Cr.M.P.No.5072 of 2003 through one Dhananjeyan, Advocate. In such a situation, I am unable to accept the representation made by the senior counsel on the basis of the instruction

given by Mr. Rudrapathy, the lower court counsel, who was present before this Court that the respondent has no connection whatsoever with the said Rajendran and he has never been the legal adviser, particularly when the same thing has not been stated in his counter-affidavit.

43. The learned senior counsel, however would vehemently contend that the long knife, if had been used as stated by the prosecution, would not have caused such a minor injury and it is quite artificial to contend that the accused persons covered a distance of 83 kms. from Thethakudi after the incident and 11 items were returned to his counsel Rudrapathy and one of the items, a pair of chappals belonged to Rajagopal, but the same was scored out by the Inspector of Police and that shows that the chappals would not have been recovered from the scene. He would also submit that the investigating officer with reference to this incident has not filed any affidavit and the witnesses in the case have also not chosen to file any supporting affidavit and as such, this would certainly create a serious doubt with regard to the narration of the events alleged by the prosecution regarding the alleged tampering.

44. None of these submissions would appeal to me, as, in my view, there are plenty of other materials prima facie to hold that the respondent' along with his legal adviser and others went to Thethakudi village in order to tamper with the prime witness, namely the complainant, P.W.1 Jeevajothi. It is true that supporting affidavits have not been filed by the investigating officer of the instant case and also by the witnesses. But, that is not a ground to ignore the materials found in the case diary and in the lower court records in the form of complaint, statements, mahazar, recovered articles, etc.

45. As a matter of fact, when the first bail application was filed before the Principal Sessions Judge, Nagapattinam, by the respondent and others, it was argued that offence under Section 307 I.P.C. is not made out and as such, he is entitled to bail. The Principal Sessions Judge while dismissing the application would observe that even assuming that Section 307 I.P.C. is not made out, there is a serious allegation that the accused persons came to Thethakudi village and trespassed into the complainant's house and attacked the complainant's relatives and intimidated P.W.1 not to give evidence in the murder case against him and as such, he is not entitled to bail. The very same Judge, within 7 days, granted bail to the respondent holding that if a long knife produced before the court has been used to attack the witness, this minor injury would not have been caused, and as such, he is entitled to be released on bail. Though this Court is not called upon to decide the legality of the bail order in the incident case, I cannot but notice the change of view of the Principal Sessions Judge, Nagapattinam, within 7 days for finding out the ground to grant bail, even though the said ground was not accepted by him earlier. However, less said is better with reference to the same.

46. As indicated earlier, this Court is only concerned with the prima facie materials which would show that the respondent/first accused went to the village of the complainant and threatened and intimidated the prime witness in the murder case and attempted to tamper with her. At the risk of repetition, this Court is constrained to state that there are prima facie materials which

give out overwhelming circumstances which are cogent and convincing would show that the respondent and other accused went to the complainant's house and attempted to tamper with her by intimidating, threatening and offering the huge money of more than Rs.6 lakhs, thereby the respondent made an attempt to interfere with the due course of administration of justice by abusing and misusing the liberty of bail granted to him earlier.

47. Apprehending that there will be a serious prejudice to trial, if the respondent is allowed to be on bail, the learned Public prosecutor would strenuously contend that the respondent/first accused is a multi billionaire owning a chain of Hotels in most of the cities and towns in the State of Tamil Nadu besides running a huge Hotel at the capital City of Delhi and he also owns Hotels in Dubai and United States of America and as such, he wields enormous money power and muscle power, which would in all probability be used by the respondent to interfere again with the course of administration of justice at the time of trial.

48. This apprehension expressed by the Public Prosecutor, in my opinion, is well founded in view of the past conduct of the respondent. Further, if this Court concludes that the material placed before the court is such as to lead to the conclusion that there is a strong prima facie case that if the accused were allowed to be at large, he would tamper with the prosecution witnesses and impede the course of justice, this Court will not refuse to exercise the wholesome power to cancel the bail as the courts cannot sit as silent spectators to the subversion of the judicial process.

49. In this context, the observation made by the Supreme Court in 20 02 CRI.L.J.1849 (Ram Govind Upadhyay v. Sudarshan Sisngh) is quite relevant. The observation is as follows:
"While it is true that availability of overwhelming circumstances is necessary for an order as regards the cancellation of a bail order, the basic criterion, however, being interference or even an attempt to interfere with the due course of administration of justice and/or any abuse of the indulgence/privilege granted to the accused."
50. A fair trial is the main objective of the criminal procedure. It must be fair to the accused as well as to the prosecution. In a criminal trial, witnesses should be able to give evidence without any inducement or threat either from the prosecution or the defence. A criminal trial must never be so conducted by the prosecution as would lead to the conviction of an innocent person. Similarly, the progress of a criminal trial should not be obstructed by the accused so as to lead to the acquittal of a really guilty offender. If any conduct on the part of an accused person is likely to obstruct a fair trial, there is occasion for the exercise of the power of this Court to secure the ends of justice. Any threat to the continuance to a fair trial must be immediately arrested and the smooth progress of a fair trial must be ensured. This can be done only by the cancellation of bail.

51. Having regard to the totality of the circumstances of the case and keeping in view the guidelines laid down in the aforesaid judgments of the various High Courts and the Supreme Court, I consider it to be a fit and proper case for cancellation of bail granted to the respondent. Accordingly,

the bail granted to the respondent by this Court dated 1.4.2002 is cancelled. Consequently, the respondent has to be arrested and committed to custody till the disposal of the murder case in S.C.No.414 of 2002 on the file of the Additional Sessions Court, Chennai at Poonamalle.

52. Before parting with this case, it is made clear that the observations made by this Court in the earlier paragraphs would confine for the purpose of disposal of this petition alone and the trial Courts concerned while dealing with the cases referred to above, would decide the matter uninfluenced by the above observations in any way, on the basis of the proved materials placed before them. The learned Public Prosecutor is directed to take steps to have a speedy trial in the murder case in S.C.No.414 of 2002 and the trial Court as well would dispose of the said case subject to the orders of this Court in the transfer application filed by the State before this Court, as expeditiously as possible, since the respondent has to be incarcerated till the trial of this case is over.

Index:Yes
Internet:Yes

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